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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1219

ANDREW G. GRUTKA, AS BISHOP OF THE CATHOLIC DIOCESE OF GARY, INDIANA,

Petitioner.

vs.

ALEX V. BARBOUR, REGIONAL DIRECTOR OF THE THIRTEENTH REGION, NATIONAL LABOR RELATIONS BOARD,

and

LAY TEACHERS FEDERATION OF THE GARY DIOCESE, LOCAL 3493,

Respondents.

BRIEF ON BEHALF OF THE LAY TEACHERS FEDERATION OF THE GARY DIOCESE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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BRIEF ON BEHALF OF THE LAY TEACHERS FEDERATION OF THE GARY DIOCESE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Lay Teachers Federation of the Gary Diocese, Local 3493, American Federation of Teachers (herein called "Union") respectfully submits this brief in opposition to the petition for a writ of certiorari filed by Andrew G. Grutka, as Bishop of the Catholic Diocese of Gary, Indiana (herein called "Employer").[1]

1. There being no dispute that the Bishop, ". . . is charged . . . with ultimate responsibility . . . for the Catholic schools of the diocese" (Pet. Brief, p. 4), there can be no question he is properly termed and is the employer in this matter. *N. L. R. B.* v. *E. C. Atkins & Co.*, 331 U. S. 398, 413-414, 67 S. Ct. 1265, 1273 (1947).

QUESTION PRESENTED.

The Employer's statement of the questions presented assumes conclusions of fact not warranted in the record. For example, whether the schools in question, "are an integral part of the religious mission" or whether said schools are "religious" at all (Pet. Brief, p. 3) are questions of fact to be determined on a full record made before the National Labor Relations Board (hereinafter referred to as the "NLRB" or the "Board"). Said record is not before this Court (see, *infra*, pp. 11, 16).

The Union proposes the following as the question presented:

> Whether a United States District Court has jurisdiction to enjoin proceedings by the National Labor Relations Board with respect to private schools operated by a religious entity.

STATEMENT OF THE CASE.

The Union first invoked the processes of the NLRB by filing a petition for certification on October 21, 1975 (Un. App. II, p. A7),[2] followed by a second amended petition (Un. App. I, pp. A1-A6).

The injunction proceeding here involved is the second such attempt by the Employer. Shortly after the Union filed its petition with the Board the Employer sought and obtained for three months an injunction from the Honorable Allen Sharp of the U. S. District Court for the Northern District of Indiana (Un. App. II, pp. A8, A12). After a consideration of the Board's motion to dismiss and for summary judgment Judge Sharp dismissed the Employer's action as an improper use of the three judge court procedure (Un. App. II, pp. A7-A12). No appeal was taken from Judge Sharp's decision. Shortly after Judge Sharp's dismissal of the Employer's first injunction attempt, the Employer discharged the Union's chief official, Robert Madsen, who then filed charges of discrimination with the Board (Un. App. III, p. A13).

The Board's hearing on the Union's election petition lasted eight days, reported in 1049 pages of transcript and seventy exhibits. During this hearing the Employer enjoyed the fullest opportunity to present his principal claim of infringement of religion. Upon that record and briefs filed by the parties, the Board through its Regional Director issued its Decision and Direction of Election on May 21, 1976 (Un. App. IV, pp. A15-A26). The Employer filed a request to review the

2. For ease of reference the Union's Appendices, attached to this brief, have been designated by roman numerals and referred to as "Un. App." followed by the appendix number and page. The Employer's appendices shall be referred to as "Pet. App." followed by the assigned letter of the alphabet and page.

Regional Director's decision with the Board and the Board denied the request on July 7, 1976. As is apparent on the face of the decision, the Board fully considered the Employer's jurisdictional constitutional claim (Un. App. IV, pp. A16-A18), as well all other appropriate election issues.

Although the Employer was aware as early as May 21, 1976, and surely by July 7, 1976 when the Board denied its request for review, that the Board intended to conduct an election, it did not seek injunctive relief until September, 1976, only a short time before the election scheduled for October 7, 1976 (Pet. Brief, p. 4).

While the Employer claims the District Court found this case to involve fundamental constitutional issues of great magnitude and of far reaching importance (Pet. Brief, p. 5) an examination of the entire decision indicates that the District Court was uncertain of the merits of the Employer's claim. The Honorable Phil M. McNagny, Jr., said:

> It has been brought to the attention of the Court that there is presently pending before the United States Court of Appeals for the Seventh Circuit a case which embraces essentially the same constitutional issues as does the cause before this Court. (*Catholic Bishop of Chicago* v. *N. L. R. B.*, No. 76-1600). The Court is of the opinion that the NLRB *may have exceeded Constitutional limits in exercising jurisdiction over lay teachers in parochial schools, but before entering a final decision on the question, the Court feels constrained to await further guidance from the Seventh Circuit.* (Pet. App. A, p. A6, emphasis supplied.)

As to the Employer's claim that the Court of Appeals did not discuss the facts before it (Pet. Brief, p. 6), the Court of Appeals as all others involved in this proceeding was aware that the District Court acted merely on the nature of the claim, and its own determination to await guidance from the higher Court, and thus, admittedly, the District Court took no evidence in the case. The District Court said:

> Since the Court's decision rests on jurisdictional and constitutional grounds supported by the record, *the Court feels no necessity existed to hear evidence*. (Pet. App. A., p. 6, emphasis supplied.)

In all other respects the Employer's Statement of the Case correctly sets forth the chronology of events in the Courts below except that on February 25, 1977 Mr. Justice Stevens denied the Employer's application for a stay in enforcement of the judgment and mandate of the Court of Appeals.

ARGUMENT FOR DENYING THE WRIT.

I.

THE COURT OF APPEALS PROPERLY HELD THE DISTRICT COURT LACKED JURISDICTION.

This matter does not present any new question or any deviation from well established precedent. This Court held in *Myers* v. *Bethlehem Shipbuilding Corporation*, 303 U. S. 41, 50, 58 S. Ct. 459, 463 (1938):

> Since the procedure before the Board is appropriate and the judicial review so provided is adequate, Congress had power to *vest exclusive jurisdiction in the Board and the Circuit Court of Appeals.* (Emphasis supplied.)

Absent extraordinary circumstances, U. S. District Courts lack jurisdiction with respect to the Board's unfair labor practice proceedings, *Myers* v. *Bethlehem Shipbuilding Corporation, supra*, 303 U. S. at 47-50, 58 S. Ct. at 462-463, and the Board's election proceedings, *Boire* v. *Greyhound Corporation*, 376 U. S. 473, 476-479, 84 S. Ct. 894, 896-898 (1964). To, ". . . allow employers and unions to rush into federal district court at will to prevent or nullify certification elections would encourage dilatory tactics by dissatisfied parties and lead to industrial unrest." *Bishop* v. *N. L. R. B.*, 502 F. 2d 1024, 1027 (5th Cir. 1974). The Circuit Courts of Appeals have applied this rule,[3]

3. *Board of Tr. of Mem. Hosp. of Fremont City* v. *N. L. R. B.*, 523 F. 2d 845, 847 (10th Cir. 1975); *National Alliance of Postal & Fed. Emp.* v. *Klassen*, 514 F. 2d 189 (D. C. Cir. 1975); *Sterling Drug, Inc.* v. *Weinberger*, 509 F. 2d 1236, 1239 (2nd Cir. 1975); *Local No. 1547, I. B. E. W.* v. *Local No. 959, I. B. T., C., W. & H., Ind*, 507 F 2d 872, 877 (9th Cir 1974); *Bishop* v. *N. L. R. B.*, 502 F. 2d 1024, 1027 (5th Cir. 1974); *Wellman Industries Inc.* v. *N. L. R. B.*, 490 F. 2d 427, 428 (4th Cir. 1974); *Communications Workers of America* v. *United Telephone Com-*

(Continued on next page)

and the lower Court's ruling that the district court lacked jurisdiction is quite routine and consistent with the foregoing precedent. Indeed to have ruled otherwise would be, ". . . at war with the long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Shipbuilding Corporation, supra*, 303 U. S. at 50-51, 58 S. Ct. at 463.

The exceptions to this well established rule first arose in *Leedom* v. *Kyne*, 358 U. S. 184, 79 S. Ct. 180 (1958). In that case the Board included professional employees in a bargaining unit containing both professional employees and employees who were not professional, which was admitted by the Board to be contrary to the specific statutory prohibition, ". . . the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit." (29 U. S. C. 159(b)(1)). This Court ruled in *Kyne* that district courts will have jurisdiction only in a suit, ". . . to strike down an order of the Board made in excess of its delegated powers *and contrary to a specific prohibition in the Act.*" 358 U. S. at 188, 79 S. Ct. at 184 (emphasis supplied). No claim is made nor can be made here that the Board is acting "contrary to a specific prohibition in the Act" (see *e.g.*, Un. App. II, p. A11) and thus the *Kyne* exception is inapplicable. The only other exception following *Kyne* was found in *McCulloch* v. *Sociedad Nacional*, 372 U. S. 10, 83 S. Ct. 671 (1963). In *Boire* v. *Greyhound Corporation, supra*, this Court quoted from and explained the *McCulloch* decision as follows [376 U. S. at 480, 84 S. Ct. at 898]:

(Continued from preceding page)

pany of Ohio, 478 F. 2d 310, 311 (6th Cir. 1973); *Sears, Roebuck and Co.* v. *Solien*, 450 F. 2d 353, 355 (8th Cir. 1971); *Vapor Blast Manufacturing Company* v. *Madden*, 280 F. 2d 205, 208-209 (7th Cir. 1960), *cert. denied* 364 U. S. 910.

> . . . District Court jurisdiction was upheld in a situation involving the question of application of the laws of the United States to foreign-flag ships and their crews, the Court was careful to note that "the presence of public questions particularly *high in the scale of our national interest because of their international complexion* is a uniquely compelling justification for prompt judicial resolution of the controversy over the Board's power. No question of remotely comparable urgency was involved in Kyne, which was a purely domestic adversary situation. *The exception recognized today is therefore not to be taken as an enlargement of the exception in Kyne.*" 372 U. S., at 17, 83 S. Ct. at 675, 9 L. Ed. 2d 547. (Emphasis supplied.)

This Court made it clear in *Boire* and later decisions that the *Kyne* exception is narrow, confined only to situations where the Board acts "contrary to a specific prohibition in the Act," *Boire* v. *Greyhound Corporation, supra,* 358 U. S. at 188, 79 S. Ct. at 184; *Bro. of Ry & S. C.* v. *Ass'n for Ben. of Non-Con. Emp.,* 380 U. S. 650, 659-660, 85 S. Ct. 1192, 1197 (1965). As one Court of Appeals said recently:

> Until otherwise instructed we shall continue to regard *Myers* as stating the general rule and *Leedom* v. *Kyne* as being what the Supreme Court says it is—a narrow exception. *Sterling Drug, Inc.* v. *Weinberger,* 509 F. 2d 1236, 1239 (2nd Cir. 1975).

Since this matter does not involve a question of "international complexion"[4] and there is no showing of any action by the Board "contrary to a specific prohibition in the Act"[5] there exist no bases for invoking the very narrow exception to the general rule that district courts lack jurisdiction.

4. 372 U. S. at 17, 83 S. Ct. at 675.

5. 358 U. S. at 188, 79 S. Ct. at 184.

II.

THE RATIONALE OF FEDERAL LEGISLATION IN THIS AREA IS THE NLRB MUST HEAR AND DETERMINE ALL ISSUES IN THE FIRST INSTANCE.

In its early and basic interpretations of Federal labor policy, this Court made it clear that all such questions were to be resolved in a unified nationally applied scheme through the NLRB to avoid a patchwork of differing interpretations among the various states. *N. L. R. B.* v. *Hearst Publications,* 322 U. S. 111, 123, 125, 64 S. Ct. 851, 857-858 (1944).

In *Myers* v. *Bethlehem Shipbuilding Corporation, supra,* 303 U. S. at 50, 58 S. Ct. at 463 this Court said, that to give the district court jurisdiction would, "in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board *exclusively* should hear and determine *in the first instance*" (emphasis supplied). And this Court said in *N. L. R. B.* v. *Reliance Fuel Oil Corporation,* 371 U. S. 224, 226, 83 S. Ct. 312, 313 (1963):

> This Court has consistently declared that in passing the National Labor Relations Act, Congress intended to and did vest in the Board the fullest *jurisdictional* breadth constitutionally permissible under the Commerce Clause. See, *e.g.,* Guss v. Utah Labor Relations Board, 353 U. S. 1, 3, 77 S. Ct. 598, 599, 609, 1 L. Ed. 2d 601; Polish National Alliance of United States of North America v. National Labor Relations Board, 322 U. S. 643, 647-648, 64 S. Ct. 1196, 1198-1199, 88 L. Ed. 1509; National Labor Relations Board v. Fainblatt, 306 U. S. 601, 607, 59 S. Ct. 668, 672, 83 L. Ed. 1014. Compare Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 480, 75 S. Ct. 480, 487, 99 L. Ed. 546. (Emphasis original.)

Upon this basic construction the Board has been deemed the appropriate agency to initially determine all questions placed before it, even those in which constitutional claims are raised. *N. L. R. B.* v. *Jones & Laughlin S. Corp.,* 301 U. S. 1, 32,

57 S. Ct. 615, 622 (1937); *Associated Press* v. *N. L. R. B.*, 301 U. S. 103, 130-131, 57 S. Ct. 650, 655 (1937); *Myers* v. *Bethlehem Shipbuilding Corporation, supra,* 303 U. S. at 49, 58 S. Ct. at 463.[6]

In addition to the cases cited immediately above the NLRB regularly has determined matters in which were raised the same constitutional religious claims as here. *Good Foods Manufacturing & Processing Corp.,* 195 NLRB 418, *enforced* 492 F. 2d 1302 (7th Cir. 1974); *Cap Santa Vue, Inc.,* 172 NLRB 1558, *enforced* 424 F. 2d 883 (D. C. Cir. 1970); *Western Meat Packers, Inc.,* 148 NLRB 444, 450, *enforcement denied on other grounds* 350 F. 2d 804 (10th Cir. 1965); *Sunday School Board of Southern Baptist Convention,* 92 NLRB 801.[7]

In 1970 the Board for the first time exercised its discretion to assert its jurisdiction over non profit, private educational institutions. *Cornell University,* 183 NLRB 329; 29 C. F. R. § 103.1. Within that category of employers are private schools operated by religious institutions. Thus there has arisen a number of cases involving various school systems of Catholic dioceses (see *infra,* p. 16, n.9; Un. App. IV, pp. A16-A17) and in such cases the Board has decided to decline jurisdiction if a school is completely religious and to assert jurisdiction if a school is substantially secular, that is, like non-religious, non-profit, educational institutions over which jurisdiction has been asserted. *Roman Catholic Archdiocese of Baltimore,* 216 NLRB 249.

6. Specifically this Court said in *Myers:*

> The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, *all questions of constitutional right* or statutory authority are open to examination by the court [of appeals]. (Emphasis supplied.)

7. Indeed, in *Catholic Charities of Buffalo,* 220 NLRB No. 5 (90 LRRM 1279) the employer, of the same religious beliefs as the Employer here, "urged the Board to assert jurisdiction", yet the Board, "independently examined the record to see whether the assertion of jurisdiction is warranted."

There is every good reason that the Board should first hear and determine all labor controversies, and even those where, as here, constitutional religious issues are raised. In any matter where one claims governmental conduct to be an infringement of religious beliefs the tribunal must determine whether in fact religious beliefs are truly involved and to what extent, if at all, such beliefs will be restricted by the operation of the statute in question. *Wisconsin* v. *Yoder,* 406 U. S. 205, 215-216, 92 S. Ct. 1526, 1533 (1972). See also: *Schlesinger* v. *Councilman,* 420 U. S. 738, 755, 95 S. Ct. 1300, 1312 (1975).[8] The Board, with preferred expertise in the statute it administers, is best suited to make the initial determination of whether or not the operation of that statute will interfere or restrict the free exercise of religious beliefs. As this Court said recently in *Schlesinger* v. *Councilman,* 420 U. S. at 757, 95 S. Ct. at 312:

> The latter rule [exhaustion of administrative remedies], looking to the special competence of agencies in which Congress has reposed the duty to perform particular tasks, is based on the need to allow agencies to develop the facts, to apply the law in which they are peculiarly expert, and to correct their own errors. The rule ensures that whatever judicial review is available will be informed and narrowed by the agencies' own decisions. It also avoids duplicative proceedings, and often the agency's ultimate decision will obviate the need for judicial intervention.

See also: *Boire* v. *Greyhound Corporation, supra,* 376 U. S. at 481, 84 S. Ct. at 899 and *N. L. R. B.* v. *Hearst Publications, supra,* 322 U. S. at 130-131, 64 S. Ct. at 860.

An examination of the Board's consideration of this case shows it performed its assigned tasks precisely as Congress intended and as this Court has decreed (Un. App. IV, pp. A16-A21). What this Court recently said in *Schlesinger* v. *Councilman* as to the military court system and its ability to hear and

8. "The precise content of constitutional rights almost invariably turns on the context of fact and law in which they arise" (420 U. S. at 755, 95 S. Ct. at 1312).

determine all issues, including even constitutional claims, is precisely applicable here:

> . . . implicit in the congressional scheme embodied in the Code is the view that the military court system generally is adequate to and responsibly will perform its assigned task. We think this congressional judgment must be respected and that it must be assumed that the military court system will vindicate servicemen's constitutional rights. (420 U. S. at 758, 95 S. Ct. at 1313.)

No less can be said for the NLRB which, as shown above, in addition to its acknowledged expertise in labor controversies, has determined, with Court approval, the very same constitutional claims raised here (see *supra*, p. 10).

Upon the foregoing, past precedent is clear that the NLRB has exclusive jurisdiction to hear this matter in the first instance with respect to all issues, including the constitutional claims raised.

III.

THE EMPLOYER'S CONTENTIONS ARE WITHOUT MERIT.

The specific claims advanced by the Employer are plainly contrary to the controlling principles set forth above. It cites no authority for its claimed "rights of churches to have prompt access to courts of law at the beginning of—and not long after—the assertion of governmental power . . ." (Pet. Brief, p. 8), and, as shown above its contention is diametrically contrary to the firmly established doctrine of exhaustion of administrative remedies.

The Employer's arguments based upon the narrow exceptions of the *Kyne* and *McCulloch* decisions (Pet. Brief, pp. 8-9) have not explored fully the meaning of those cases. The Employer cannot show here any conduct by the Board which is "contrary to a specific prohibition in the Act", as required in *Kyne* and obviously this matter does not involve a question of "international complexion" as in *McCulloch* (see *supra*, pp. 7-8).

Therefore, no bases exist for this matter to be treated within the narrow exception to the rule that district courts are without jurisdiction.

The Employer next argues that its claim of religious liberty is of greater importance than any cases where district court jurisdiction was allowed and therefore this case should be a further extension of the *Kyne* exception (Pet. Brief, pp. 9-10). There is no question that religious liberty is an essential valuable right however it does not follow that said right will be lost or that those who claim it will in any way suffer from a consideration by an administrative agency, subject to judicial review. It must be assumed that a Congressionally established agency will vindicate a litigant's constitutional rights. *Schlesinger* v. *Councilman*, 420 U. S. at 758, 95 S. Ct. at 1313.

The Employer's reliance on cases where the district court was found to have jurisdiction *vis a vis* agencies other than the Board (Pet. Brief, p. 10) is misplaced. In *Weinberger* v. *Salfi*, ... U. S. ....., 95 S. Ct. 2457 (1975), cited by the Employer (Pet. Brief, p. 10), this Court found an agency's determination to have been final and therefore the district court, the appropriate court of judicial review, properly had jurisdiction (95 S. Ct. at 2468). More importantly, in *Salfi* this Court said:

> We have previously recognized that the *doctrine of administrative exhaustion should be applied with a regard for the particular administrative scheme at issue.* Parisi v. Davidson, 405 U.S. 34, 92 S.Ct. 815, 31 L.Ed. 2d 17 (1972); McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657, 23 L.Ed. 2d 194 (1969). Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review. (..... U. S. at ....., 95 S. Ct. at 2467, emphasis supplied.)

As we have shown in greater detail above (see *supra*, pp. 9-12), Congress intended the Board to have the fullest exclusive jurisdiction to hear and determine all matters in the first instance.

Public Utilities Commission of California v. *United States*, 355 U. S. 534, 78 S. Ct. 446 (1958) and *Aircraft & Diesel Equipment Corp.* v. *Hirsh*, 331 U. S. 752, 67 S. Ct. 1493 (1947) cited by the Employer (Pet. Brief, p. 10) are patently inapposite. First they involve different administrative schemes, and therefore cannot be relied on to interrupt the exclusive jurisdiction of the NLRB, *Weinberger* v. *Salfi, supra*, ... U. S. ....., 955 S. Ct. at 2467. Further, in *Aircraft & Diesel*, this Court said:

> Where the intent of Congress is clear to require administrative determination, either to the exclusion of judicial action or in advance of it, a strong showing is required, both of inadequacy of the prescribed procedure and of impending harm, to permit short-circuiting the administrative process. Congress' commands for judicial restraint in this respect are not lightly to be disregarded. [33 U. S. at 773-774, 67 S. Ct. at 1504].

The Employer has not shown the Board's procedure to be inadequate or any impending harm simply by litigating the issues first before the Board.

Next the employer erroneously argues that the Court of Appeals failed to treat the allegations of the Complaint as true (Pet. Brief, p. 10). As this case came before the Court only upon the Employer's complaint, the Board's motion to dismiss and the District Court's decision, the Court of Appeals obviously considered the allegations of the complaint, however it determined the matter upon the decisions of this Court that a district court lacked jurisdiction (Pet. App. B, p. A15). Nowhere in the decision below is there any suggestion that the Court ignored the complaint, as asserted by the Employer.

The Employer next claims that by raising a First Amendment issue it should be entitled to forego administrative proceedings

and the attendant costs and delays (Pet. Brief, p. 10). First it should be pointed out that absent the two unmeritorious injunction attempts (Un. App. II, pp. A7-A12, Pet. App. A) this matter may well have been presently pending in the appropriate reviewing court of appeals. Thus the Employer has to look only to himself as the cause of delay. As to costs of litigating in the administrative scheme (Pet. Brief, p. 10); or the alleged futility in appearing before an agency which has earlier established a rule of "not 'completely religious' " (Pet. Brief, p. 11); or the so-called "pernicious practice" of awaiting access to the courts until completion of the government's administrative process (Pet. Brief, p. 11); one cannot say that such costs or alleged futility are greater or less than if litigation commenced in various district courts and thereafter was reviewed in various courts of appeals. But of greater importance the appropriate administrative scheme must be observed in order to obtain a unified, nonduplicitous and efficient administration in an area where the particular agency enjoys expertise. *Weinberger* v. *Salfi, supra*, ... U. S. at ....., 95 S. Ct. at 2467; *Schlesinger* v. *Councilman, supra*, 420 U. S. at 756-757, 95 S. Ct. at 1312. As this Court said in *Myers* v. *Bethlehem Shipbuilding Corporation, supra*, 303 U. S. 51-52, 58 S. Ct. at 464:

> Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage [note omitted]. Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact.

Or as one Court of Appeals said:

> Irreparable harm cannot be established by a mere reliance on the burden of submitting to agency hearings. This is a risk of litigation that is inherent in society, and not the type of injury to justify judicial intervention. *Sears, Roebuck and Co.* v. *N.L.R.B.*, 473 F.2d 91, 93 (D.C. Cir. 1972).

It cannot be validly contended that this agency or any other, ". . . is without even a vestige of specialized competence in the field of constitutional law and has less than that in the field of religion" (Pet. Brief, p. 11). It must be assumed from the Congressional mandate establishing the Boad that this or any other agency "will vindicate . . . constitutional rights". *Schlesinger* v. *Councilman, supra,* 420 U. S. at 758, 95 S. Ct. at 1313. Past precedent teaches that indeed this particular agency has experience and a notable record of hearing and properly determining similar constitutional questions. *N. L. R. B.* v. *Jones & Laughlin S. Corp.,* 301 U. S. 1, 32, 57 S. Ct. 615, 622 (1937); *Associated Press* v. *N. L. R. B.,* 301 U. S. 103, 130-131, 57 S. Ct. 650, 655 (1937); *Good Foods Manufacturing & Processing Corp.,* 195 NLRB 418, *enforced* 492 F. 2d 1302 (7th Cir. 1974); *Cap Santa Vue, Inc.,* 172 NLRB 1558, *enforced* 424 F. 2d 883 (D. C. Cir. 1970); *Western Meat Packers, Inc.,* 148 NLRB 444, 450, *enforcement denied on other grounds* 350 F. 2d 804 (10th Cir. 1965); *Sunday School Board of Southern Baptist Convention,* 92 NLRB 801. In fact the Board has heard and determined a number of similar religious operated school cases in which it asserted jurisdiction and in which a claim of unconstitutional infringement of religion was raised. These matters are now being reviewed in various Courts of Appeals, upon the full record made before the Board, exactly as the statute requires.[9] No good purpose could be served by adopting the Employer's suggestion that district courts should interrupt this present orderly administrative scheme, now being reviewed in various Courts of Appeals.

9. Pending at this time before the Seventh Circuit is *The Catholic Bishop of Chicago* v. *N. L. R. B. (Illinois Education Association, Intervenor),* case no. 76-1600 to review the Board's decision reported at 224 NLRB No. 164 and *Diocese of Fort Wayne-South Bend, Ind.* v. *N. L. R. B.,* case no. 76-1638 to review Board's decision reported at 224 NLRB No. 164 on both of which oral argument took place on January 21, 1977 (Pet. App. B, pp. A9-A10). Also presently pending before the Ninth Circuit is *Cardinal Timothy Manning Roman Catholic Archbishop of the Archdiocese of Los Angeles,* v. *N. L. R. B.,* case no. 77-1286, to review the Board's decision reported at 223 NLRB No. 198.

It is ludicrous to suggest that the Board's decision is in "direct conflict" with this Court's opinion in *Lemon* v. *Kurtzman,* 403 U. S. 602, 91 S. Ct. 2105 (1971) (Pet. Brief, p. 11) because: (1) as the Board noted, there is a substantial and distinguishing difference between those statutes which have the primary effect of aiding religion and those, as here, which manifestly have no such primary effect (Un. App. IV, p. A18); and (2) "The precise content of constitutional rights almost invariably turns as the context of fact and law in which they arise".[10] Therefore, the Employer's rash and off hand conclusions with respect to difficult and different issues of fact and law must be disregarded.

Upon all the foregoing it is submitted that each point raised by the Employer is without merit, that the lower court's decision is correct and in harmony with well established precedent and therefore review by this Court is unnecessary.

CONCLUSION.

It may look and sound appealing but is of no substance to characterize this matter as a "labor case" or a "First Amendment case" (Pet. Brief, pp. 8 and 11). The inescapable fact is that a labor organization has invoked the exclusive jurisdiction of the NLRB seeking certification as the bargaining representative of an appropriate unit of employees (Un. App. I, p. A1). In another proceeding an employee has asserted his unlawful discharge for having engaged in statutorily protected activities before the only agency authorized to rule thereon (Un. App. III, p. A13). In both situations the Employer has advanced a claim of First Amendment protection. Will it help to call this a labor-First Amendment case or a First Amendment-labor case?

10. *Schlesinger* v. *Councilman, supra,* 420 U. S. at 755, 95 S. Ct. at 1312. See also: *Wisconsin* v. *Yoder, supra,* 406 U. S. at 215, 92 S. Ct. at 1533.

The past precedent is firmly established that district courts have no jurisdiction to act and that the statutory scheme is intended and is wholly adequate to develop a record upon which it will rule subject to judicial review. It is respectfully submitted that no special exceptions should be carved out simply to accomodate a particular party's defense, here First Amendment rights. Without doubt that party will be fully heard in its claim but in the Congressionally designed manner, that is in the ordinary course of the administrative scheme followed by judicial review.

It is respectfully submitted that the subject petition be denied.

Respectfully submitted,

CHARLES ORLOVE,
JACOBS, BURNS, SUGARMAN & ORLOVE,
201 North Wells Street,
Suite 1900,
Chicago, Illinois 60606,
Telephone: [312] 372-1646,

LAWRENCE A. POLTROCK,
LIGTENBERG, DEJONG, POLTROCK & GIAMPIETRO,
134 North LaSalle Street,
Chicago, Illinois 60602,
Telephone: [312] 236-0606,
Counsel for Lay Teachers Federation of the Gary Diocese, Local 3493, American Federation of Teachers, AFL-CIO—One of Respondents.

Form NLRB-502
(11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved.
Budget Bureau No. 64-R002.14

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO. 13-RC-13855

DATE FILED November 4, 1975

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

- [X] RC-CERTIFICATION OF REPRESENTATIVE —A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION — A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: *(Check one)* [ ] In unit not previously certified
  [ ] In unit previously certified in Case No. _____.
- [ ] AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____.

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER	EMPLOYER REPRESENTATIVE TO CONTACT	PHONE NO.
SEE ATTACHED	SEE ATTACHED	SEE ATTACHED

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*
SEE ATTACHED

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*	4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE
School Systems	Education

5. Unit Involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All regular full time and part time lay teachers, counselors, librarians and school nurses,

Excluded: All para-professionals, office clerical employees, janitors and maintenance employees, members of religious orders and diocesan priests, guards and supervisors as defined in the Act.

(If you have checked box RC in 1 above, check and complete EITHER item 6a or 6b, whichever is applicable)

6a. NUMBER OF EMPLOYEES IN UNIT:
PRESENT 400
PROPOSED (BY UC/AC) _____

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?*
[X] YES [ ] NO
*Not applicable in RM, UC, and AC

7a. [X] Request for recognition as Bargaining Representative was made on September 12, 1975 *(Month, day, year)* and Employer declined recognition on or about no reply *(If no reply received, so state)* *(Month, day, year)*

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*

NAME	AFFILIATION
None	
ADDRESS	DATE OF RECOGNITION OR CERTIFICATION

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*

10. IF YOU HAVE CHECKED BOX 10D IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ..... NO X

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF ..... *(Insert name)* A LABOR ORGANIZATION, OF ..... *(Insert address)* SINCE ..... *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

LAY TEACHERS FEDERATION OF THE GARY DIOCESE, AMERICAN FEDERATION OF TEACHER
(Petitioner and affiliation, if any)

By /s/ ROBERT MADSEN Chairman
(Signature of representative or person filing petition) *(Title, if any)*

Address 3618 176th Place, Lansing, Illinois 60438 474-8965
(Street and number, city, State, and ZIP Code) *(Telephone number)*

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 923-779

APPENDIX I.

A1

A3

ATTACHMENT

Diocese of Gary, Indiana—and the following:

Father Foverbough
1441 Hoffman Street
Hammond, Indiana 46320
Phone: 932-0427

Holy Name Church
Rev. Julian Jercha
11000 W. 133rd Avenue
Cedar Lake, Indiana 46303
Phone: 374-7160

St. Patrick Church
Rev. Stephen Vrabely
312 W. Indiana Avenue
Chesterton, Indiana 46304
Phone: 926-1282

St. Mary Church
Msgr. Vincent Lengerich
321 E. Joliet Street
Crown Point, Indiana 46307
Phone: 663-0044

St. Joseph Church
Msgr. Edward Litot
440 Joliet Street
Dyer, Indiana
Phone: 865-2271

Holy Trinity Church
Msgr. Paul P. Bogovich
4752 Carey Street
East Chicago, Indiana 46312
Phone: 330-4061

Immaculate Conception Church
Rev. Joseph Pusateri
4862 Olcott Avenue
East Chicago, Indiana 46312
Phone: 398-0210

St. Mary Church
Rev. Robert P. Gehring
812 W. 144th Street
East Chicago, Indiana 46312
Phone: 398-0189

St. Stanislaus Church
Rev. Joseph Niezgoda
805 W. 150th Street
East Chicago, Indiana 46312
Phone: 398-2341

St. Francis Xavier Church
Msgr. Paul Haney
2453 Putnam
East Gary, Indiana 46405
Phone: 362-1411

Blessed Sacrament Church
Rev. ..... Madejczyk
4101 Garfield Street
Gary, Indiana 46408
Phone: 380-3081

Holy Angels Cathedral
Rev. Don C. Grass
640 Tyler Street
Gary, Indiana 46402
Phone: 882-6079

Holy Family Church
Rev. Stanley Milewski
416 East Ridge Road
Gary, Indiana 46409
Phone: 884-1733

Holy Trinity Church
Rev. Joseph Viater
425 W. 12th Avenue
Gary, Indiana 46407
Phone: 882-1840

St. Ann Church
Rev. John Minnich
6025 W. 25th Avenue
Gary, Indiana 46406
Phone: 844-2448

St. Hedwig Church
Rev. Hilary Halter
1724 Pennsylvania Street
Gary, Indiana 46407
Phone: 882-2584

St. Joseph the Worker Church
Rev. Benadict Benakovic
330 E. 45th Avenue
Gary, Indiana 46409
Phone: 884-2810

St. Mark Church
Rev. John Morales
501 W. Ridge Road
Gary, Indiana 46408
Phone: 887-0514

St. Mary of the Lake Church
Rev. Ralph Hoffman
6060 Miller Avenue
Gary, Indiana 46403
Phone: 938-1373

St. Monica Church
Rev. William Martin
2260 Adams Street
Gary, Indiana 46407
Phone: 883-1861

St. Mary Church
Rev. Richard Zellinger
525 N. Broad Street
Griffith, Indiana 46319
Phone: 838-4163

Our Lady of Perpetual Help
Rev. Timothy Doody
7104 Arizona Avenue
Hammond, Indiana 46323
Phone: 844-3438

St. Casimir Church
Rev. Anthony Balczun
4340 Johnson Street
Hammond, Indiana 46327
Phone: 931-2589

St. Catherine of Siena
Rev. Dominic Pallone
6605 Kentucky Avenue
Hammond, Indiana 46323
Phone: 845-1939

St. John Bosco
Msgr. E. N. Klein
7113 Columbia Avenue
Hammond, Indiana 46324
Phone: 844-9027

Our Lady of Grace Church
Rev. A. H. Van Nevel
2923 Jewett Street
Highland, Indiana
Phone: 838-1484

St. Bridget Church
Rev. William Vogt
130 Center Street
Hobart, Indiana 46342
Phone: 942-1215

St. Thomas Aquinas Church
Rev. Emil Bloch
108 North East
Knox, Indiana 46534
Phone: 772-4134

St. Joseph Church
Msgr. John C. Witte
109 C Street
LaPorte, Indiana 46350
Phone: 362-9595

St. Andrew Church
Rev. James McGrogan
801 W. 73rd Avenue
Merrillville, Indiana 46410
Phone: 769-8534

St. Michael Church
Rev. Michael Evanick
600 W. 58th Street
Merrillville, Indiana 46410
Phone: 980-0600

SS. Peter & Paul Church
Msgr. Casimir E. Senderak
5887 Harrison Street
Merrillville, Indiana 46410
Phone: 980-2693

Notre Dame Church
Msgr. F. J. Melevage
1010 Moore Road
Michigan City, Indiana 46360
Phone 872-8166

Queen of All Saints Church
Rev. Alfred J. Dettmer
526 S. Woodland Avenue
Michigan City, Indiana 46460
Phone: 872-9196

St. Mary Church
Rev. Albert J. Zimmerman
411 W. Eleventh Street
Michigan City, Indiana 46360
Phone: 874-7231

St. Stanislaus Church
Rev. Stanley Dominik
109 Ann Street
Michigan City, Indiana 46360
Phone: 879-9281

St. Thomas More Church
Rev. Robert Weis
8501 Calumet Avenue
Munster, Indiana 46321
Phone: 836-8610

Nativity of Our Savior Church
Rev. Carl F. Mengeling
2929 Willowcreek Road
Portage, Indiana 46368
Phone: 762-0212

St. John Evangelist Church
Rev. Joseph Till
11211—93rd Avenue

St. Michael Church
Rev. Bernard J. Shank
43 W. Wilhelm
Schererville, Indiana 46375
Phone: 322-4505

St. Paul Church
Msgr. John J. Charlebois
452 Chicago Street
Valparaiso, Indiana 46383
Phone: 464-4831

Immaculate Conception Church
Rev. M. Fred Bach
2006 Schrage Avenue
Whiting, Indiana 46394
Phone: 659-0724

Sacred Heart Church
Rev. F. Raymond Fowerbaugh
1731 LaPorte Avenue
Whiting, Indiana 46394
Phone: 659-0733

St. Adalbert Church
Rev. Joseph P. Smith
1860—121st Street
Whiting, Indiana 46394
Phone: 659-3848

St. John the Baptist Church
Rev. Edward Homco
1849 Lincoln Avenue
Whiting, Indiana 46394
Phone: 659-0023

St. John Cantius Church
Rev. Michael Tomaszewski
3901 Main Street
East Chicago, Indiana 46312
Phone: 398-1370

St. Patrick Church
Rev. Phillip Fusco
3810 Grand Blvd.
East Chicago, Indiana 46312
Phone: 398-1036

St. Francis of Assisi Church
Rev. Ignatius C. Vichuras
3905 Fir Street
East Chicago, Indiana 46312
Phone: 397-1885

Our Lady of Guadalupe Church
Rev. Thomas Hunt
3522 Deadar Street
P. O. Box 3400
East Chicago, Indiana 46312

Assumption Church
Rev. John P. Zubak
4001 Fir Street
East Chicago, Indiana 46312
Phone: 398-1023

APPENDIX II.

UNITED STATES DISTRICT COURT

Northern District of Indiana

Hammond Division

ANDREW G. GRUTKA, as Bishop of the Catholic Diocese of Gary, Indiana,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD Region 13, LAY TEACHERS FEDERATION OF GARY DIOCESE, AMERICAN FEDERATION OF TEACHERS,
Respondents.
} No. H 75-251

ORDER AND MEMORANDUM

The Court is presented with a motion to dismiss filed by the defendant, National Labor Relations Board, pursuant to Federal Rules of Procedure 12(b). The Court has studied the memoranda filed by both plaintiff and defendant, and GRANTS the defendant's motion to dismiss.

The Court assumes jurisdiction pursuant to 28 U. S. C., § 2284.

FACTS

On October 21, 1975 plaintiff, Andrew G. Grutka, Bishop of the Catholic Diocese of Gary, Indiana, was informed by a priest, under the ecclesiastical jurisdiction of plaintiff, that he had been served with a petition for certification of representation by the National Labor Relations Board, Region 13, along with a notice

of representation hearing to be held by the Board. On October 24, 1975, plaintiff filed with the Board a motion for continuance followed on October 28, 1975 by a motion to dismiss. On October 30, 1975 the Board granted the motion for a continuance, but in a subsequent ruling on November 5, 1975 denied plaintiff's motion to dismiss. On November 6, 1975 plaintiff was notified that some 49 of the pastors of the Catholic parishes in the Diocese of Gary were served with a second amended petition for certification of representation. Plaintiff then petitioned this Court to convene a three judge court pursuant to 28 U. S. C., § 2284 and to grant a temporary restraining order. Plaintiff's petition along with a supplemental motion to convene a three judge court, alleges that Chapter 7 of the Labor Management Relations Act, 29 U. S. C. § 141 et seq., and all rules and regulations promulgated pursuant thereto, as applied by the defendants, constitutes a violation of the rights of plaintiff under the establishment and free exercise clauses of the First Amendment of the Constitution, as well as a violation of plaintiff's rights guaranteed by the Fifth and Ninth Amendments of the Constitution of the United States.

On November 17, 1975 this Court granted plaintiff's request for a temporary restraining order enjoining the defendants in this case from taking further action in the Board's proceedings entitled United States of America, National Labor Relations Board, Diocese of Gary, Indiana, Employer, and Lay Teachers Federal of Gary Diocese, American Federation of Teachers, petitioner, case number 13-RC-13855, "Representation Petition", and case number 13-CA 14813, "Charge against Employer", and in the Catholic Schools of the Diocese of Gary until further order of this Court.

The defendant, National Labor Relations Board, filed a motion to dismiss plaintiff's motion to convene a three judge court pursuant to Federal Rules of Civil Procedure 12(b), alleging lack of subject matter jurisdiction, or, in the alternative to grant summary judgment in its favor.

ANALYSIS AND CONCLUSIONS

In its memorandum in support of its motion to dismiss the National Labor Relations Board alleges that this Court is without subject matter jurisdiction. In support of this contention the defendant, National Labor Relations Board, goes to great lengths in presenting the argument, with cases in support thereof, that only under extraordinary circumstances does a district court have the power to review the Board's representation proceedings. The Board has failed to carefully peruse plaintiff's application to convene a three judge court. In his motion, plaintiff alleges not only that the Board's representation proceedings are unconstitutional but he also alleges the enabling statute itself, the Labor Management Relations Act, is unconstitutional as applied. Such an allegation, along with his request for equitable relief, takes plaintiff's motion outside of the Board's argument and makes it an application to convene a three judge court under 28 U. S. C., § 2282. Once such an application is made a district judge, sitting alone, has the power to initially determine whether the complaint formally alleges a basis for equitable relief, whether the constitutional question presented is substantial and whether the case presented otherwise comes within the requirements of the applicable three judge statute. *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U. S. 713 (1962).

The Board further argues that plaintiff's application fails to satisfy the requirements of 28 U. S. C., § 2282, in that it basically seeks to challenge, not the Labor Management Relations Act, but the administrative decision of National Labor Relations Board. In this conclusion this Court must concur.

To enjoin the enforcement of a federal statute under the three judge court legislation, petitioner must seek to restrain the enforcement, operation or execution of any Act of Congress repugnant to the Constitution of the United States. See 28 U. S. C., § 2282. In construing the three judge court legislation the courts have long since held that these statues must be read

not as a measure of broad social policy to be construed with great liberality, but as an enactment technical in the strict sense of the term and to be applied as such. *Mitchell* v. *Donovan*, 398 U. S. 427 (1970); *Swift & Co.* v. *Wickham*, 382 U. S. 111 (1965); and *Phillips* v. *United States*, 312 U. S. 246 (1940). In following this strict interpretation of the act the Courts have generally held that a three judge court need not be convened merely to hear constitutional challenges to federal administrative action as distinguished from Acts of Congress. *Jameson and Co.* v. *Morgenthau*, 307 U. S. 171 (1938); *National Student Association* v. *Hershey*, 412 F. 2d 1103 (D .C. Cir. 1969); *Sardino* v. *Federal Reserve Bank of New York*, 361 F. 2d 106 (2d Cir. 1966); *Anderson* v. *International Revenue Service*, 371 F. Supp. 1278 (D. C. Wyo. 1974).

The plaintiff, in his memorandum, argues that no action thus far taken by the National Labor Relations Board is the formal object of his complaint. Instead, plaintiff contends that his application to convene a three judge court is directed at the constitutionality of the Labor Management Relations Act as applied. In support of his argument plaintiff cites *Flast* v. *Cohn*, 392 U. S. 83 (1968), *Zemel* v. *Rusk*, 381 U. S. 1 (1964).

Plaintiff's memo arguments do not correlate well with his application to convene a three judge court. In paragraph 11 and 12 of plaintiff's application for temporary restraining order and for a preliminary and permanent injunction filed with this Court on November 10, 1975 reference is made to the actions of the National Labor Relations Board in attempting to take jurisdiction over plaintiff's schools. Such action plaintiff alleges constitutes an excessive entanglement of government and religion in violation of the First Amendment to the Constitution of the United States. In a supplemental motion to convene a three judge court filed with this Court on November 20, 1975 plaintiff again notes that it is the action of the National Labor Relations Board in attempting to enforce, operate, and execute the Labor Management Relations Act that constitutes a violation

of plaintiff's First Amendment rights as well as a violation of his rights guaranteed by the Fifth and Ninth Amendments to the Constitution of the United States. Clearly, it is the acts of the Board that are the formal object of plaintiff's complaint. As outlined above, an application to enjoin such actions of a Federal Administrative Agency is not sufficient to convene a three judge court.

In spite of petitioner's own description of the problem as occurring as a result of administrative action, he still maintains that his application is directed at the Labor Management Relations Act as applied. Yet nowhere in his complaint does he assail a provision of the act as giving rise to a constitutional problem. Instead, he cites *Zemel* and *Flast* as authority for his position that by merely alleging an act to be unconstitutional as applied a three judge court must be convened. A close examination of both *Zemel* and *Flast* reveals that neither case supports plaintiff's position. In *Zemel* the appellant specifically attacked the Passport Act of 1926 and § 215 of the Immigration and Nationality Act of 1952 on the grounds that they contain no standards and are therefore an invalid delegation of legislative power. The Supreme Court held this allegation cannot be brushed aside as an attack upon the actions of the Secretary because in arguing invalid delegation, appellant has quite clearly assailed the statutes themselves. In *Flast*, where *Zemel* was cited as controlling authority, appellant's constitutional attack focused on the statutory criteria which state and local authorities must meet to be eligible for federal grants under § 205 of the Elementary and Secondary Education Act of 1965. Thus, although the appellants in *Flast* challenged the constitutionality of administrative action taken under the act, they also *clearly* challenged the act itself. Nowhere in his application or supplemental motion to convene a three judge court does the plaintiff in this case clearly assail the act itself. Instead, plaintiff merely alleges the Labor Management Relations Act is unconstitutional as applied by the National Labor Relations Board without

making a constitutional attack upon any provision of the act. Such an approach would, as the court concluded in *Sardino* v. *Federal Reserve Bank of New York, supra,* improperly require cumbersome three judge court procedure in cases where the court would be bound to interpret the legislative mandate as not authorizing the administrative action and leave the constitutionality of the Act of Congress untouched.

Further, the granting of plaintiff's application would permit anyone, against whom federal administrative action appears to be unconstitutional, to convene a three judge court by merely alleging the enabling statute to be unconstitutional as applied. Such is not the intent of 28 U. S. C., § 2282, which the courts, as outlined above, have held must be strictly construed. Nor can it be said the Supreme Court intended such a result with its precedent setting decision in *Zemel* where it upheld the granting of a three judge court only after a showing that appellants had *clearly* assailed the statutes themselves.

Finally, because petitioner has failed to clearly assail an Act of Congress as required by 28 U. S. C., § 2282, this Court need not reach the question of whether plaintiff has presented a substantial constitutional question and instead must deny his application to convene a three judge court.

Enter February 12, 1976.

/s/ ALLEN SHARP
Judge, United States District Court.

FORM NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

First Amended CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 13-CA-15445

Date Filed May 19, 1976

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Diocese of Gary, Indiana

b. Number of Workers Employed:

c. Address of Establishment (Street and number, city, State, and ZIP code): 1441 Hoffman St., Hammond, Indiana

d. Employer Representative to Contact: Rev. F. Powerbough

e. Phone No.: [219] 932-0427

f. Type of Establishment (Factory, mine, wholesaler, etc.): School System

g. Identify Principal Product or Service: Elementary & High School Education

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (4) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

A. Since on or about November 20, 1975 and continuing to date, the above named employer, by its officers, agents and supervisors:

1. Threatened its employees with the school closings and attendant loss of employment if the employees supported the Lay Teachers Federation of the Gary Diocese, Local 3493, AFT;

2. Promised employees benefits and job security(i)if they disaffiliated from the American Federation of Teachers and/or(ii)if they formed an independent union under and within the authority of the Bishop of the Gary Diocese and;

3. Threatened its employees with adverse consequence if they continued to remain affiliated with the American Federation of Teachers and/or refused to form another union under and within the authority of the Bishop of the Gary Diocese.

B. On or about February 24, 1976 the above named employer, by Rev. F. Powerbough, discharged employee Robert A. Madsen because:(1)said employee engaged in protected and concerted activities;and(2)said employee is the president of the Lay Teachers Federation of the Gary Diocese, Local 3493, AFT;and(3)the Lay Teachers Federation of the Gary Diocese, Local 3493, AFT filed an NLRB petition for certification in Case No. 13 RC13855

By the foregoing and other acts and conduct, the above named employer violated its employees' rights under Section 7 of the Act and violated Section 8(a)(1)(3) and (4) of the Act.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Robert A. Madsen

4a. Address (Street and number, city, State, and ZIP code) | 4b. Telephone No.

3618 176th Place, Lansing, Illinois 60438 | 474-8965

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Charles Orlove
By Jacobs, Burns, Sugarman & Orlove — Attorney
(Signature of representative or person filing charge) (Title, if any)

Address 201 North Wells St., Suite 1900 — 372-1646 (Telephone number) — May 18, 1976 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 765-071

APPENDIX III.

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APPENDIX IV.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ANDREW G. GRUTKA, Bishop of the Roman Catholic Diocese of Gary, Indiana,[1] *Employer,* and LAY TEACHERS FEDERATION OF THE GARY DIOCESE, LOCAL 3493, AMERICAN FEDERATION OF TEACHERS,[1] *Petitioner.*	Case No. 13-RC-13855

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[3]

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1. The names of the Employer and the Petitioner appear as correctly reflected in the record.

2. The briefs submitted by the parties have been carefully considered. In keeping with the parties' post-hearing Stipulation, that Stipulation is hereby received as Union Exhibit No. 33 and has been considered as part of the record herein.

3. At the hearing, the Employer renewed its Motion to Dismiss the Petition for lack of jurisdiction. The hearing officer referred the

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2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[4]

(Continued from preceding page)

Motion to the undersigned for ruling. For the reasons set forth hereinafter, the Employer's Motion to Dismiss is hereby denied. The Employer also moved, at the hearing, that this proceeding be transferred directly to the Board for decision. Because I conclude that this proceeding does not raise questions which must be decided by the Board in the first instance, the Employer's request to transfer this proceeding to the Board is hereby denied.

4. The Employer operates 44 elementary schools, one junior high school and three high schools within the geographical boundaries of the Diocese of Gary, Indiana. The Petitioner seeks to represent certain employees who are employed at those schools.

The Employer contends, as noted above, that this case should be dismissed because the Board is without jurisdiction. Specifically, the Employer contends that assertions of jurisdiction by the Board would deprive it of valuable property rights in contravention of the Due Process Clause of the Fifth Amendment. However, it is now well settled that the provisions of the Act do not contravene the Fifth Amendment. *N. L. R. B.* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1.

The Employer also contends that assertion of jurisdiction by the Board would violate the Religion Clauses of the First Amendment, in that assertion of jurisdiction would cause governmental entanglement in the affairs of the church. In *Cap Santa Vue, Inc.* v. *N. L. R. B.*, 424 F. 2d 883 (C. A. D. C.), the Court, in enforcing the Board's decision (172 NLRB 1558), pointed out that case law has long distinguished between the freedom to hold religious *beliefs*, and *conduct* based upon religious beliefs. It reaffirmed that conduct is subject to regulation for the protection of society, citing therein, *Braunfield* v. *Brown*, 366 U. S. 599; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Reynolds* v. *United States*, 98 U. S. 145. The Court in *Cap Santa Vue, supra*, held that despite the employer's religious beliefs, the employer's conduct was subject to regulation by the provisions of the Act. Thus, the Employer herein may not successfully argue that its conduct is immune from regulation of the government by reason of the First Amendment, because its conduct may be based upon religious belief.

The undersigned is of the opinion and finds that the Employer is subject to the Board's exercise of its jurisdiction in this case because a compelling governmental interest exists for the regulation of conduct set forth in the Act. The compelling interest is set forth in Section 1 of the Act, and is directed at the avoidance of industrial strife which interferes with the free flow of commerce and with the pro-

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3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

(Continued from preceding page)

duction of articles and commodities for commerce. See *Cardinal Timothy Manning, Roman Catholic Archbishop*, 223 NLRB No. 198; *Henry M. Hald High School Association*, 213 NLRB No. 54; *Cap Santa Vue, Inc., supra*. In sum, it is settled that conduct based upon religious belief is subject to governmental regulation, and compelling governmental interests justify the existence of the regulatory scheme prescribed by the Act. Thus, the Employer's contention that assertion of jurisdiction by the Board would violate its First Amendment rights is without merit.

The Employer also argues that the Board should refrain from exercising jurisdiction in this case because the schools it operates are "completely religious" in nature. It is the Board's policy to decline jurisdiction over institutions only when they are completely religious, not just religiously associated. *Cardinal Timothy Manning, Roman Catholic Archbishop, supra; Roman Catholic Archdiocese of Baltimore*, 213 NLRB No. 54.

The evidence regarding this issue shows that students who attend the elementary schools maintained by the Employer often start the day by attending mass, and prayers are said before and after meals in the school cafeteria. The day closes with prayer. Students who attend the high school often begin each class with prayer. The schools and classrooms are adorned with religious statues, pictures and other religious matter. Religious holidays are observed, and the subject of Religion is taught. All schools also teach admittedly non-religious subjects such as Reading, Mathematics, English, Social Studies, Science, Music and other subjects. Non-religious textbooks are used, and the subjects are taught using non-religious methods. Specific instruction concerning the subject of Religion is limited to about 45 minutes per day for elementary school children. High school students are required to take courses such as Theology and the Old Testament. Religious nuns and priests as well as lay teachers provide instruction to the students. Less than 1 percent of the students who graduate from the Employer's schools become religious nuns or priests.

Based upon the foregoing, it is clear that the nature of the schools is not completely religious. The schools perform the secular function of educating children and only concern themselves in part with religious instruction. That prayers are recited and classrooms are religiously adorned does not negate the secular functions performed by the schools. "That the [Employer] seeks to provide an education based on Christian principles does not lead to a contrary conclusion. Most religiously associated institutions seek to operate in conformity with their religious tenets." *Roman Catholic Archdiocese of Baltimore, supra*, Slip Op. p. 5. Because the schools are not completely

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4. A question affecting commerce exists concerning the representation of certain employees of the Employer within

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religious in nature, the Board will not decline to assert jurisdiction merely because they are religiously associated. *Cardinal Timothy Manning, Roman Catholic Archbishop, supra; The Catholic Bishop of Chicago, A Corporation Sole,* 220 NLRB No. 63; *Roman Catholic Archdiocese of Baltimore, supra.*

In its brief, the Employer cites *Meek* v. *Pittinger,* ..... U. S. .....; 44 L. Ed. 2d 217 and *Lemon* v. *Kurtzman,* 403 U. S. 602, in support of its argument that the schools are completely religious and the government entanglement is barred by the Religion Clause of the First Amendment. However, those cases are clearly distinguishable. In both cases, the Supreme Court regarded the state statutory schemes there at issue as having the primary effect of aiding religion. The Act has no such primary effect. Further, the Supreme Court held that the state statutory schemes designed to lessen the primary effect of aiding religion unconstitutionally entangled the states in the *manner* in which classes at the religiously associated schools would be conducted. Again, the Act will cause no such entanglement.

Next, the Employer contends that the Board lacks jurisdiction because each school is a separate employer, and that the individual schools do not meet the Board's monetary jurisdictional standards. The Petitioner, on the other hand, contends that all the schools collectively constitute a single employer headed by the Bishop of the Roman Catholic Diocese of Gary, Indiana.

The record shows that the Diocese of Gary, Indiana includes the counties of Lake, Porter, Starke and LaPorte, all located in the State of Indiana. The Diocese is governed by Bishop Andrew G. Grutka, who has ultimate authority over all religious matters pertaining to the Diocese, including the educational mission of the Church. The Bishop has the sole ultimate right to determine what will be taught in the diocesan schools, and the manner in which it will be taught. The Bishop also has the sole ultimate right to determine the terms and conditions of employment of employees, classroom size, and whether or not a school should be opened or closed. As pointed out above, there are 44 elementary schools, one junior high school, and three high schools currently in operation within the Diocese. The Bishop holds title to all of the real property, including the schools, that is owned by the Church within the Diocese. Before a school can be built, and before substantial capital expenditures can be made on existing schools, the Bishop's required approval is sought.

The Diocese is divided into various parishes. Each elementary school is financially supported by a particular parish, except that one elementary school is financially supported by several parishes. Each

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the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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elementary school is funded either by tuition charged to its students or by contributions of the parish which come from voluntary contributions of the parishioners, or both. The Bishop does not "give" money to the parishes for the operation of the elementary school, although the Bishop has "loaned" money to a parish for use in its elementary school. However, the Bishop does directly provide funds for the operation of the three high schools.

The Bishop has delegated his authority over the schools to the Superintendent of Schools. The Superintendent of Schools acts as a liaison between the schools and the Bishop. The Superintendent has a supporting staff which consists of an Assistant Superintendent, a secretary and a bookkeeper. There also exists a nine member Gary Diocesan School Commission.

The office of the Superintendent of Schools has devised a document entitled "Administration and Policies of Diocese of Gary, Indiana". A provision is contained in each employment contract signed by the lay teachers wherein the teachers agree to abide by the terms of the document named above. The Administration and Policies promulgated by the Superintendent contains, *inter alia,* the following information: the names and address of the members and *ex officio* members of the Gary Diocesan School Commission, and its constitution and policies, a description of the responsibilities of the Superintendent; a description of the functions of the pastor, school principal and teacher; a school calendar; teacher certification requirements; teacher application for employment forms; salary and benefits schedule for teachers and principals; the employment contract form used by teachers and the schools; an outline of benefits; teacher evaluation and other forms; bookkeeping forms and codes; textbook recommendations and suggested curricula and other matters. An individual school may deviate from the policies contained in the above described document, except that salary schedules are considered binding upon all schools within the Diocese.

The office of the Superintendent maintains files of teacher applicants and conducts initial interviews of applicants. Applicants are then referred to a particular school, as needed, for additional interviewing. The office of the Superintendent also maintains files which consist of financial budgets for some elementary schools, copies of the employment contracts of all lay teachers and other records. On at least one occasion, the Superintendent has initiated the discharge of a lay teacher.

The Superintendent's office also publishes a newsletter entitled "Diogram, Diocese of Gary Schools Weekly Telegram". The Diogram is distributed to all teachers and principals. It normally sets

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5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining

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forth a calendar of school-related events such as teacher evaluation committee meetings and testing program committee meetings. It reports on events such as meetings held by the Diocesan School Commission with lay teacher representatives concerning lay teacher compensation and benefits. The newsletters often have an article entitled "From the Office of the Superintendent . . ." which contains news and reminders of deadlines and procedures.

Members of the School Commission are appointed by the Bishop. The Commission acts as an advisory body to the Bishop on school policy matters. It regularly meets and considers matters of school policy, and advises the Bishop on such matters. It reviews the operating budgets of the three high schools. The budgets are then sent to the Bishop for final approval.

Salary schedules are determined by the Bishop after discussions among the teachers, pastors, principals, and the School Commission. The salary schedules are the same for all schools within the Diocese. All employees enjoy the same insurance benefits, except for the employees of one high school, and all lay employees enjoy the same retirement benefits.

The contract of employment for all lay teachers is signed by the teacher, the principal, the pastor, and the Superintendent. Under the contract, the teacher agrees to be available for 175 instructional days, two days prior to the opening of school, two parent conference days, two in-service days, two record days, and two days after teaching days in June. The contract further provides that teachers will be given 10 days without loss of salary for personal illness and two days for personal and/or business matters without loss of salary. Teachers also are allowed a certain amount of time off in the event of critical illness, the death or funeral of a member of the teacher's immediate family, without loss of salary. The contract also provides that the Superintendent may terminate the contract at any time for ". . . incompetency, immorality, insubordination, inability to perform on the part of the teacher, or for any other justifiable cause. . . ." However, the contract provides the teacher with the opportunity to be heard by the "Diocesan School Office" on such charges, and that the finding of the Superintendent ". . . shall be final and binding upon both Teacher and School."

Teachers may present grievances to the Superintendent and the Bishop for adjustment or assistance.

The Bishop has delegated the administration of the elementary schools to the parish pastors. All schools have a principal, who is responsible for the day to day functioning of the schools.

Each school sets its own tuition rates, if any, hires and pays its

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within the meaning of Section 9(b) of the Act:[5]

All full-time and regular part-time lay teachers, counsellors, librarians and school nurses, including department heads, employed by the Employer at its schools

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own teachers, devises its own curriculum and maintains its own handbook of school policies, except that tuition for the three high schools needs the Bishop's approval.

It is readily apparent, based upon the facts set forth above, that the Employer maintains a significant degree of control over the schools, and over the terms and conditions of employment of the lay teachers employed at the schools. Furthermore, it holds itself out to the public as an integrated enterprise. Accordingly it may be considered as such for the purposes of assertion of the Board's jurisdiction. *Cardinal Timothy Manning, Roman Catholic Archbishop, supra; Roman Catholic Diocese of Brooklyn,* 221 NLRB No. 136; *Roman Catholic Archdiocese of Baltimore, Archdiocese High School, supra.*

The parties stipulated that all of the schools involved herein collectively had gross revenues of about $7 million for the past year, and during the same period of time purchased goods and services valued in excess of $50,000 directly from points outside the State of Indiana. Because the Employer's operations have a substantial impact upon interstate commerce, I find that it will effectuate the purposes of the Act to assert jurisdiction herein. *Cardinal Timothy Manning, Roman Catholic Archbishop, supra; Roman Catholic Archdiocese of Baltimore, supra.*

5. The parties are in agreement as to the persons to be included in and excluded from the unit. However, the Employer contests the appropriateness of the diocese-wide unit sought by the Petitioner. It maintains that the only appropriate unit is one limited to each individual school.

In determining whether a unit is appropriate for purposes of collective bargaining, the Board will examine all of the relevant circumstances to determine whether the employees in the unit sought enjoy a sufficient community of interest. "There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit, the Act requires only that the unit be 'appropriate' " *Morand Brother Beverage Co.,* 91 NLRB 409, 418, *enf'd.* 190 F. 2d 576 (C. A. 7, 1951).

Many of the facts relevant to the issue of the appropriateness of the unit sought by the Petitioner have already been set forth above. Additionally, while there is no interchange of teachers among the schools within the Diocese, all teachers within the Diocese have, in the past, regularly attended diocesan wide meetings which concerned school matters.

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listed in Appendix A; but excluding all persons engaged as teachers in the Confraternity of Christian Doctrine Program, all substitute teachers, all paraprofessional employees, office clerical employees, janitors and maintenance employees, members of religious orders, priests and nuns, and guards and supervisors as defined in the Act.

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The record shows that some of the schools are in relatively close geographic proximity to each other, and, as pointed out above, the unit sought by the Petitioner includes all the schools within the boundaries of Diocese of Gary, except for one school which the parties stipulated should be excluded.

It is apparent that teachers at all of the schools perform similar functions for the Employer under similar working conditions, as pointed out above. Finally, no labor organization seeks a smaller unit, and there is no history of collective bargaining as to any of the unit employees.

Based upon the record as a whole, and specifically because the unit sought by the Petitioner is co-extensive with the Employer's geographical boundaries, all employees within the unit sought enjoy common benefits and conditions of employment, perform similar functions, share common interests, and work under the direction of the same higher level authorities, and because no union is seeking a smaller unit, I find that a unit consisting of employees of all schools operated by the Employer within the Diocese of Gary, Indiana, as listed in Appendix A attached hereto, but excluding St. Michael's Byzantine School, Merrillville, Indiana, constitute a unit appropriate for purposes of collective bargaining. See *Cardinal Timothy Manning, Roman Catholic Archbishop, supra.*

6. In its Brief, the Petitioner requests that an election be conducted before the end of the school year. However, I cannot direct that an election be held before the end of the school year inasmuch as this would interfere with the parties' right to request review of this decision under Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, if they choose to exercise such right. Because it appears that employees in the voting unit may not be present during the summer months, I direct that, in the event that an election cannot be held before the end of the school year, the election shall not be conducted until after the commencement of the next academic year. *Fordham University,* 193 NLRB 134; *Tusculum College,* 199 NLRB 28.

Should deferral of the election to the next academic year be necessary, such election shall be held among employees in the appropriate unit who are employed during the payroll period immediately preceding the date of the issuance of the Notice of Election. *Tusculum College, supra.*

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election dates and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Lay Teachers Federation of the Gary Diocese, Local 3493, American Federation of Teachers.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *N. L. R. B.* v. *Wyman-Gordon Company,* 394

U. S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the 13th Region, 219 S. Dearborn St., Chicago, Illinois on or before May 28, 1976. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, D. C. 20570. This request must be received by the board in Washington by June 3, 1976.

Dated May 21, 1976 at Chicago, Illinois.

/s/ ALEX V. BARBOUR
Regional Director, Region Thirteen

APPENDIX A

Holy Name School
13209 Schneider Street
Cedar Lake, Indiana 46303

St. Mary School
321 East Joliet Street
Crown Point, Indiana 46307

Holy Trinity School
4742 Carey Street
East Chicago, Indiana 46312

Indiana Harbor Catholic Elementary School
3916 Pulaski Street
East Chicago, Indiana 46312

St. Mary School
816 West 144th Street
East Chicago, Indiana 46312

St. Francis Xavier School
2453 Putnam
East Gary, Indiana 46405

Holy Angels Cathedral School
975 West 6th Avenue
Gary, Indiana 46402

Holy Trinity
423 West 12th Avenue
Gary, Indiana 46407

St. Hedwig School
1701 Connecticut Street
Gary, Indiana 46407

St. Mark School
511 West Ridge Road
Gary, Indiana 46408

St. Monica School
2254 Adams Street
Gary, Indiana 46407

St. Casimir School
4329 Cameron Avenue
Hammond, Indiana 46327

St. John Bosco
1231 - 171st Place
Hammond, Indiana 46324

St. Patrick School
640 North Calumet Road
Chesterton, Indiana 46304

St. Joseph School
432 Joliet Road
Dyer, Indiana 46311

Immaculate Conception School
4860 Olcott Avenue
East Chicago, Indiana 46312

Our Lady of Perpetual Help School
7128 Arizona Avenue
Hammond, Indiana 46323

St. Stanislaus School
4940 Indianapolis Boulevard
East Chicago, Indiana 46312

Blessed Sacrament
4101 Garfield Street
Gary, Indiana 46408

Holy Family School
3721 Delaware Street
Gary, Indiana 46409

St. Ann School
6001 West 25th Avenue
Gary, Indiana 46406

St. Joseph the Worker School
4460 Delaware Street
Gary, Indiana 46409

St. Mary of the Lake School
6070 Miller Avenue
Gary, Indiana 46403

St. Mary School
525 North Broad Street
Griffith, Indiana 46319

St. Catherine of Siena School
6525 Kentucky Avenue
Hammond, Indiana 46323

Our Lady of Grace School
3025 Highway Avenue
Highland, Indiana 46322

St. Bridget School
107 Main Street
Hobart, Indiana 46342

St. Joseph School
101 C Street
LaPorte, Indiana 46350

SS. Peter & Paul School
5861 Harrison Street
Merrillville, Indiana 46410

Queen of All Saints School
1715 East Barker Avenue
Michigan City, Indiana 46350

St. Stanislaus School
1501 Franklin Street
Michigan City, Indiana 46360

Nativity of Our Savior School
2929 Willowcreek Road
Portage, Indiana 46368

St. Michael School
16 West Wilhelm
Schererville, Indiana 46375

Immaculate Conception School
2022 Schrage Avenue
Whiting, Indiana 46394

St. Adalbert School
2118 Indianapolis Boulevard
Whiting, Indiana 46394

Bishop Noll Institute
1519 Hoffman Street
Hammond, Indiana 46320

Andrean High School
5959 Broadway
Merrillville, Indiana 46410

St. Thomas Aquinas School
404 East Washington Street
Knox, Indiana 46534

Aquinas Elementary School
801 West 73rd Avenue
Merrillville, Indiana 46410

Notre Dame School
1000 Moore Road
Michigan City, Indiana 46360

St. Mary School
312 West Tenth Street
Michigan City, Indiana 46360

St. Thomas More School
8435 Calumet Avenue
Munster, Indiana 46321

St. John Evangelist School
9400 Wicker Avenue
St. John, Indiana 46373

St. Paul School
Chicago & Academy Streets
Valparaiso, Indiana 46383

Sacred Heart School
1723 LaPorte Avenue
Whiting, Indiana 46394

St. John the Baptist School
1844 Lincoln Avenue
Whiting, Indiana 46394

Bishop Noll Junior High
1519 Hoffman Street
Hammond, Indiana 46320

Marquette High School
306 West Tenth Street
Michigan City, Indiana 46360